

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

ALEC GARCIA RODRIGUEZ,)	
)	
Petitioner,)	MEMORANDUM OPINION
)	AND RECOMMENDATION
v.)	
)	
UNITED STATES OF AMERICA,)	1:07CV942
)	1:05CR290-1
Respondent.)	

Petitioner Alec Garcia Rodriguez, a federal prisoner, has filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (docket no. 23).¹ In that motion he raised a single claim for relief alleging that he should be resentenced because a prior conviction from the State of New York, which was counted in his criminal history in this court, was later dismissed. The undersigned examined the issue and found that Petitioner had a possibly viable claim under § 2255, but that the factual support for the claim was insufficient to meet Petitioner's burden of proof at that time. More records from New York regarding the reasons for the dismissal were needed (see docket no. 29).

Because Petitioner was incarcerated, counsel was later appointed to obtain the necessary documentation to support the claim and to brief the matter (docket no. 35). Counsel himself encountered difficulties in obtaining the documents from New York. Therefore, he sought and received four extensions of time to allow him time

¹ This and all further cites to the record are to the criminal case.

to get the documents and prepare a brief. The last of these extensions expired on March 15, 2009 (docket no. 43). Petitioner has not submitted further documentation or briefing and has not sought a further extension of time. For this reason, the matter is now before the court for a decision and Petitioner's sole claim for relief remains insufficiently supported. Although he has shown that his New York conviction was dismissed, he has not shown that the dismissal was for a reason that would entitle him to relief under § 2255. Therefore, his § 2255 motion should be denied.

For these reasons, **IT IS RECOMMENDED** that Petitioner's motion to vacate, set aside or correct sentence (docket no. 23) be **DENIED** and that Judgment be entered dismissing this action.

A handwritten signature in black ink, appearing to read 'Wallace W. Dixon', is written over a horizontal line.

Wallace W. Dixon
United States Magistrate Judge

Durham, N.C.
March 19, 2009